

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District <u>7 TH CIRCUIT / APPEALS</u>
Name (under which you were convicted): <u>BOROCZK, DARRICK</u>	Docket or Case No.: <u>09CR00647</u>
Place of Confinement: <u>USP TUCSON ARIZONA</u>	Prisoner No.: <u>41411-424</u>
UNITED STATES OF AMERICA Movant (include name under which you were convicted) <u>v. BOROCZK, DARRICK</u>	

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: ILLINOIS DISTRICT COURT
- (b) Criminal docket or case number (if you know): 09CR00647
2. (a) Date of the judgment of conviction (if you know): 8-02-2011
- (b) Date of sentencing: 8-02-2011
3. Length of sentence: 840 MONTHS
4. Nature of crime (all counts):
18:2251(A) sexual exploitation of a minor - CTS 1-4
18:2252(A)(5)(B) POSS OF MATERIAL CONTAINING CHILD PORN - CTS 5

FILED

11-10-14
NOV 10 2014

m/b

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

14CV9084
JUDGE GUZMAN
MAGISTRATE JUDGE MARTIN

5. (a) What was your plea? (Check one)
- (1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

PLEADED GUILTY TO COUNT 1 AND 2 OF SAID INDICTMENT

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☒ N/A

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:

(a) Name of court: 7TH DISTRICT COURT OF APPEALS

(b) Docket or case number (if you know): 09CR00647

(c) Result: DENIED.

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): NOT SURE

(f) Grounds raised: ISSUES ARE IN THE APPELLANTS BRIEF AND -
- ADDENDUM WITHIN THE COURT OF APPEALS.

- (g) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☒ No ☒

If "Yes," answer the following: N/A

(1) Docket or case number (if you know): N/A 09CR00647

(2) Result: N/A Denied

(3) Date of result (if you know): N/A NOT SURE

(4) Citation to the case (if you know): N/A NOT SURE

(5) Grounds raised: N/A NOT SURE

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐ NOT SURE

(7) Result: INFORMATIONS LISTED WITHIN APPEAL DOCKET SHEET

(8) Date of result (if you know): NOT SURE

(b) If you filed any second motion, petition, or application, give the same information: NOT SURE

(1) Name of court: SEVENTH CIRCUIT COURT OF APPEALS

(2) Docket or case number (if you know): 09CR00647

(3) Date of filing (if you know): NOT SURE

(4) Nature of the proceeding: NOT SURE

(5) Grounds raised: APPELLANTS BRIEF/AND ADDENDUM

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐ NOT SURE

(7) Result: INFORMATION S LISTED WITHIN APPEAL

(8) Date of result (if you know): NOT SURE

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☒ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: **ATTORNEY WAS INEFFECTIVE FOR NOT LISTING THE - ISSUES THAT SHOULD HAVE BEEN ADDRESSED IN APPEAL -**

12. For this motion, state every ground on which you claim that you are being held in violation of the

Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

ATTACHED CLAIMS VIOLATIONS CONSTITUTIONAL LAWS -
GROUND ONE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒ **ONLY ISSUES WITHIN DIRECT APPEAL / SEVENTH.**

(2) If you did not raise this issue in your direct appeal, explain why:

ATTORNEY WAS INEFFECTIVE ASSISTANCE OF COUNSEL (CLAIMS)

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☒ No ☒ **not sure**

(2) If your answer to Question (c)(1) is "Yes," state: **N/A**

Type of motion or petition: **N/A NOT SURE**

Name and location of the court where the motion or petition was filed: **N/A**

UNITED STATES DISTRICT COURT OF ILLINOIS

UNITED STATES COURT OF APPEALS

for the ~~seventh~~ circuit
seventh

Docket or case number (if you know): N/A 09CR00647

Date of the court's decision: N/A NOT SURE

Result (attach a copy of the court's opinion or order, if available): N/A Denied

(3) Did you receive a hearing on your motion, petition, or application? N/A not sure

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A not sure

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A not sure

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

United States Court of Appeals for the Seventh Circuit

Docket or case number (if you know): 09CR00647

Date of the court's decision: not sure

Result (attach a copy of the court's opinion or order, if available):

Docketed with the Seventh Circuit

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or

raise this issue: ATTORNEY WAS INEFFECTIVE ASSISTANCE OF COUNSEL

GROUND TWO:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS. PROTECTED - BY THE RIGHT TO HAVE COUNSEL ARGUE EVIDENCES, BEING USED AGAINST THE DEFENDANT, SEARCH & SEIZURE ISSUES, INHANCEMENTS, LEGALITYS OF GUIDELINE SENTENCING IN REVIEW DE NOVO HEARINGS, the right to Due Process to argue new Laws & Sentencings, no Categorical Analysis of the offenses statute was conducted.

2. Plain error: The District Court ERRED IN ORDERING AN UNSUPPORT-ED SENTENCING AND should have APPLIED a Categorical Analysis. the modified categorical approach reviews evidences, search and seizures - statements, and sentencing guidelines & Laws relevant elements subpart disclosed by a Plea agreement, or explained by effective Assistance of Counsel.

3. APPELLANT: IS PROTECTED UNDER THE SIXTH AMENDMENT, THE FOURTH, EIGHTH, OF THE CONSTITUTIONAL OF THE UNITED STATES (THAT should have Protected the APPELLANT)

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐ NOT SURE

(2) If you did not raise this issue in your direct appeal, explain why:

INEFFECTIVE ASSISTANCE OF COUNSEL - CLAIMS

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐ NOT SURE

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

IF ANYTHING WAS FILED / ITS ON COURT DOCKETT WITH COURTSDocket or case number (if you know): 09CR00647Date of the court's decision: NOT SURE

Result (attach a copy of the court's opinion or order, if available):

SEVENTH CIRCUIT APPEALS DOCKETTED WITH COURTS

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ NOT SURE

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ 2255 APPLICATION NOW PRESENT, ONLY

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A(6) If your answer to Question (c)(4) is "Yes," state: N/AName and location of the court where the appeal was filed: N/ADocket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A.

GROUND THREE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(ONLY ISSUES WITHIN APPEAL BRIEFING-)

(2) If you did not raise this issue in your direct appeal, explain why:

ATTORNEY NEVER ARGUED APPLICANTS ISSUES.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

NOT SURE.

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: DIRECT APPEAL

Name and location of the court where the motion or petition was filed: SEVENTH CIRCUIT

Docket or case number (if you know): 09CR00647

Date of the court's decision: NOT SURE (DATED ON COURT DOCKET ACTIVITIES)

ARGUMENTS

1. The District Court erred in ordering an supported sentence.
A. Standard of Review.

The legality of a guidelines sentence is reviewed de novo, United States v. Wilson, 568 F.3d 670, 672 (8th Cir. 2009). Legal issues are reviewed de novo, factual issues and reasonableness of the sentence are reviewed, for an abuse of discretion, Williams v. United States 452 F.3d 1009, 1009, 1012 (8th Cir. 2006).

APPELLANT'S ATTORNEY WAS INEFFECTIVE BY NOT ARGUING APPELLANT'S ISSUES THAT APPELLANT WANTED TO BE ARGUED. APPELLANTS UNEDUCATED IN LAW - AND CAN'T KNOW HOW TO ADDRESS THESE ISSUES - THAT MAY HAVE BEEN VALID FOR A LESSER SENTENCING DUE TO NEW LAWS ETC.
APPELLANTS HAVE THE RIGHTS TO BE REPRESENTED BY EFFECTIVE ASSISTANCE OF COUNSEL - TO ARGUE NEW LAWS - DOWNWARD DEPARTURES, UNDER SENTENCING PROVISIONS; THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT OF THE CONSTITUTION; THAT PROTECTS THE APPELLANT TO DUE PROCESS OF RIGHTS.

Result (attach a copy of the court's opinion or order, if available):

ONLY OPINIONS OR ORDERS, ARE ON APPEAL DOCKETT,

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ NOT SURE,

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ NOT SURE

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ ATTY, NEVER ARGUED APPELLANTS ARGUMENTS,

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: SEVENTH CIRCUIT APPEALS COURT

Docket or case number (if you know): 09CR00647

Date of the court's decision: NOT SURE

Result (attach a copy of the court's opinion or order, if available):

ONLY OPINIONS OR ORDERS ON APPEAL DOCKETT,

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: ATTY NEVER ARGUED APPELLANTS ARGUMENTS.

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. APPELLANTS have the right to have Psychological testing to be evaluated per Sec. 4244, in the nature of the APPELLANTS state of mind there is no evaluation conducted. (Witness or victims were never granted to speak in the APPELLANTS behalf. - Federal Code & Rules per evidences)
 2. APPELLANT - was denied a Franks hearing the right to speak in their own behalfs - this testimony might have made a difference within sentencing - or evidences Yoused against the APPELLANT.
 3. Counsele never suppressed, and argued the evidences being Yoused against the APPELLANT within a suppression hearing. APPELLANTS attorney was ineffective for not arguing certine, evidences; evaluations, Departures, in the best of interests of the APPELLANT at time of sentencing.
- APPELLANT Didn't receive due Process of rights Governed - by the constitution of the United States, the right to effective Assistance of counsele.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐ **not sure**

(2) If you did not raise this issue in your direct appeal, explain why:

attorney never argued the issues.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐ **not sure.**

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

all motions filed with the seventh circuit court of Appeals,Docket or case number (if you know): **09cr00647**Date of the court's decision: **not sure**Result (attach a copy of the court's opinion or order, if available): **on file with seventh circuit**

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ **not sure**

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ **ONLY NOW 2255 APPLICATION**

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ **addressing issues now**

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: **seventh circuit court of Appeals**Docket or case number (if you know): **09cr00647**Date of the court's decision: **N/A**Result (attach a copy of the court's opinion or order, if available): **just filed.**

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

INAFFICTIVE ASSISTANCE OF COUNSEL -
ATTORNEY WOULDN'T FILE THE SAID INCLOSED.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: ON DISTRICT COURT DOCKETT SHEET,

(b) At arraignment and plea: ON DISTRICT COURT DOCKETT SHEET,

(c) At trial: N/A

(d) At sentencing: ON DISTRICT COURT DOCKETT SHEET

- (e) On appeal: ON DISTRICT COURT Docket Sheet,
- (f) In any post-conviction proceeding: ON DISTRICT COURT Docket Sheet
- (g) On appeal from any ruling against you in a post-conviction proceeding: ON DISTRICT COURT Docket Sheet
16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐ 2. counts of said indictment
17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒
- (a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A
- (b) Give the date the other sentence was imposed: N/A
- (c) Give the length of the other sentence: N/A
- (d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☒ No ☐

CONCLUSION

Movant has the right to due process of rights, and has the right to effective assistance of counsel to argue the inclosed said issues that protect the movant threw the amendment of the constitutional provisions. Movant is uneducated in law & is a layman and poor, and demands to know why the ATTORNEYS would not address these issues threw a SWORN AFFIDAVIT TO THE - COURTS. The Courts should be granted to know why movant was denied these due process (under plain error,) in the alternative, the Guidelines sentencing should be recalculated, a sentencing variance or departure was appropriate in light of the unusual circumstances at time of sentencing, the decision below should be reversed, and the case remanded to the District Court for further proceedings.

into the best of interests of justice so help me God.

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

ATTENTION:

Please be advised the movants uneducated in Law and is a Layman & Poor - can't afford filing fees. Its due to movants Problems with being in Segregation that hes unable to answer Past history of Direct - Appeal Questions, and Prays the Courts will over look this error - and bring forth the transcripts and records already filed within the seventh circuit court of Appeals. (So courts can understand nature of this - Application).

I hear by pray the Courts will protect the Movant under his Constitutional rights hear-by stated within said Application, Please contact me with any Questions or comments with regards to this Application, and send me the filing Appeal number. Thank You for Your time.

Therefore, movant asks that the Court grant the following relief:

or any other relief to which movant may be entitled.

N/A

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on (month, date, year).

Executed (signed) on Sept. 6, 2014 (date).

Bolczyk, D. Culick

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

UNITED STATES COURT SEVENTH CIRCUIT

CERTIFICATE OF SERVICES

CASE NO: 09CR00647

I HEAR BY: BOROCZK DARRICK (APPLICANT) sent
there the US mail system hear at USP TUCSON,
FIRST CLASS POSTAGE: TO:

⇔41411-424⇔
Us Seventh Circuit Of Il
219 S Dearborn ST
Chicago, IL 60604-1874
United States

UNDER PENALTY OF PERJURY THE STATEMENTS
IN FACT TRUE AND CORRECT, SORN ON: THE RESPECT-
-FUL DATE OF SEPT. 29, 2014,

RESPECTFULLY SUBMITTED,

APPLICANT: BOROCZK, DARRICK,

Sign: Borocz Darrick

USP TUCSON:

PO. box- 24550,

TUCSON, AZ, 85734,

DATE: SEPT. 29, 2014.

UNITED STATES COURT OF APPEALS FOR THE 8TH CIRCUIT

Name: Darrick Barocz

Date: Oct 15, 2014

READ THE SECTION(S) CHECKED CONCERNING YOUR RECENT COMMUNICATION:

☐ This office has no information concerning your case. Your document should list the case number assigned from the District Court and/or the Appellate Court. If you wish to proceed to this court from an adverse decision entered in the U.S. District Court, refer to the Federal Rules of Appellate Procedure regarding the timelines for filing a notice of appeal with the U.S. District Court.

☐ This is a court of review which cannot consider new issues that the United States District Court has not first considered. Address your request to the U.S. District Court.

☐ This office does not have forms for filing an action in the U.S. District Court. This is a court of review and cannot consider new issues that the District Court has not first considered. Address your request to the appropriate U.S. District Court.

☐ Notices of appeal are filed with the appropriate U.S. District Court. They are not filed in the U.S. Court of Appeals. The U.S. District Court will file the notice of appeal, prepare the record and forward the case to the Court of Appeals. Thereafter, the parties will be notified when the appeal is docketed with the U.S. Court of Appeals.

☐ This office does not have forms for filing an appeal or for Successive Habeas Petitions.

☒ No action is being taken regarding your paper. This is a court of limited jurisdiction which hears appeals from Final Judgments entered by the U.S. District Courts within the circuit. The Eighth Circuit covers the states of Arkansas, Iowa, Minnesota, Missouri, Nebraska, and North and South Dakota. To commence a suit in Federal (U.S.) Court, contact the appropriate U.S. District Court.

☐ This court has no original jurisdiction over state court matters. State remedies must be exhausted before a case may be commenced in the federal court system.

☐ This office is prohibited from giving legal advice. We may only provide procedural information. Specific questions regarding your case issues cannot be answered by this office.

Additional comments: Seventh Circuit court of Appeals,
Everett McKinley Dirksen US Courthouse,
219 S. Dearborn St. Room 2272. Chicago IL 60601.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
OFFICE OF THE CLERK
219 SOUTH DEARBORN STREET
SUITE: 2722
CHICAGO, ILLINOIS 60604

Darrick C. Boroczko
UNITED STATES PENITENTIARY
P.O. Box 24550
Tucson, AZ 85734-0000

In Correspondence of: October 28, 2014

Dear Darrick C. Boroczko,

The enclosed Motion Under 28 U.S.C. 2255 is being returned to you unfiled. This needs to be filed in the appropriate District Court.

If you have further questions, please contact us at the above address.

Sincerely,

Pro-se Clerk